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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/421,713	10/20/1999	LARRY A. WINTER	8567.72US01	4525

28164 7590 12/29/2004  
ACCENTURE CHICAGO 28164  
BRINKS HOFER GILSON & LIONE  
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CHICAGO, IL 60610

EXAMINER

ABDI, KAMBIZ

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/421,713

Applicant(s)

WINTER ET AL. *S*

Examiner

Kambiz Abdi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 8-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 87-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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### **DETAILED ACTION**

1. The prior office action is incorporated herein by reference. In particular, the observations with respect to claim language, and response to presented arguments.

- No claims are amended.
- Claims 6-7 are cancelled.
- Claims 1-5, and 8-41 are pending.

### ***Response to Arguments***

2. Applicant's arguments filed 5 October 2004 have been fully considered but they are not persuasive for the following reasons:

3. In response to applicant argument regarding rejection of independent claims 1, 27, 35, and 40-41 under 35 U.S.C. § 103 as being anticipated by U.S. Patent No. 6,343,277 to John Gaus et al. over U.S. Patent No. 6,047,274 to Jack J. Johnson et al and "CellNet Data Systems" web site content of 28 April 1998.

4. The examiner believes that the argument that the applicant has put forward in regards to claims 1, 27, 35, and 40-41 is not persuasive to overcome the prior art of record as they have been presented in their latest form filed at the above date. The reasoning behind the argument by the applicant is that the determination of price is changing at the time or after dispatch of services. It is known in the art that his types of contracts are called futures. And it is clearly stated in the Gaus that "a contract to be formed for a future energy need and does not limit contract formation to the time that the contracted for product is required." It is clear that Gaus is concerned and teaches the fact that a price can be changed based on conditions of the actual dispatch time (See Gaus column 2, lines 38-45, column 6, lines 21-38 and column 7, lines 12-25). Gaus clearly teaches that a bid is submitted and the bid can change and be updated based on the changes in market conditions.

5. As per arguments put forward by the applicant in regards to claims 27-41, there is sufficient evidence in the teachings of Gaus to disclose the "economic merit order" (high-low delta) of the current

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application and clearly sets the precedent for calculating such "economic merit order". Applicant discloses that the "economic order merit" is stacking the bids from lowest price to highest price (emphasis added). Examiner would like to point out that Gaus explicitly teaches such listing of the bids in figure 16, 17, 18, and 20. Also it is disclosed that a ranking method within the Gaus system ranks the bids and displays them as they have been ranked (See Gaus column 5, line 50- column 6, line 5). It clearly shows the specific ranking disclosed by the applicant in page 11, lines 28-31 of the arguments.

6. Therefore, the examiner maintains the previous rejection of the claimed invention as they have been amended and presented in their current form.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 1-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,343,277 to John Gaus et al. over U.S. Patent No. 6,047,274 to Jack J. Johnson et al and "CellNet Data Systems" web site content of 28 April 1998.

9. As for claims 1-26, 40, and 41, Gaus teaches all of the claimed elements representing utilization of computer system based energy market place. Gaus teaches utilization of graphical interface, Internet as a method of communication. The roles and responsibilities of a moderator within an online energy auction market for energy market with well established steps of collecting bids from all sides, establishing a clearing price, creating and collecting information for settling the transaction, information such as usage from the end users, and collecting contract information, to finalize a transaction between providers of

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energy and customers (see Gaus figures 1- 3, 5, 7, 11-14, 16-18, 22, also see column 3, lines 13-64, column 4, lines 22-68, column 5, lines 1-68, and column 6, lines 1-68). What Gaus does not explicitly teach are, details on meter reading and billing process as well as the utilization of real time data collected on predetermined intervals. Although, Johnson clearly discloses the system and methods of collecting meter reading at the end user (see Johnson abstract, figures 1, 4, 6, 7, 10-16, column 4, lines 14-60, column 2, lines 22-57, column 7, lines 15-24, column 8, lines 61-63, column 16, lines 1-13) But Johnson is not clear on if the data collected is based on real time predetermined interval collection. However, "CellNet Data Systems" clearly discloses metering on a real time based on predetermined intervals for calculation of prices on electric delivery (See CellNet page 3, page 5, paragraph 3, page 6, paragraph 3-5, page 14 and 15, tables 1-3, and page 15, paragraph 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have integrated all the components mentioned above together in one system. As one can see utilization of a common marketplace which will help the energy providers, energy traders, and end users to benefit from efficient transaction amongst these entities. To provide such an environment as detailed information as possible it would be obvious how it can benefit to bring all the components of conducting business as such in one environment seamless to the users to expedite the entire transaction and make pricing more accurate. Therefore it reduces the cost of conducting an energy marketplace and mediating such a marketplace.

10. As for claims 27-39, Gaus teaches all of the claimed elements disclosed in the claims mentioned here (see Gaus figures 1- 3, 5, 7- 9, 14-18, and 20-22) except Gaus does not explicitly refer to the metering and bill components. Also, Gaus does not explicitly teach the power generation and how the system disclosed will effect power generation. Although, Johnson does explicitly teach the elements of metering and billing (see Johnson figures 4, 6, 10, 15, 16, column 3, lines 2-16, column 4, lines 33-40, column 7, lines 15-29, column 8, lines 61-63, column 9, lines 55-59, column 10, lines 18-22, and column 16, lines 1-13) as well as disclosing the adjustment of power availability by providers based on end users' actual usage data available to them through the disclosed system (see Johnson column 7, lines 15-51). Johnson further teaches that by implementing direct metering and integrating settlement and billing

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components, it will expedite the speed of transactions and ease of conducting business once all the necessary information and data are aggregated through one system, making the process from the start (i.e. bidding) to the end (i.e. payment) taking place in one seamless operation. However, "CellNet Data Systems" clearly discloses metering on a real time based on predetermined intervals for calculation of prices on electric delivery (See CellNet page 3, page 5, paragraph 3, page 6, paragraph 3-5, page 14 and 15, tables 1-3, and page 15, paragraph 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have integrated all the components together in one system for the motivation stated above.

11. Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

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advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kambiz Abdi whose telephone number is (703) 305-3364. The examiner can normally be reached on 9 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P Trammell can be reached on (703) 305-9768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks  
Washington, D.C. 20231**

or faxed to:


(703) 872-9306 [Official communications; including After Final communications labeled "Box AF"]

(703) 746-7749 [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to:

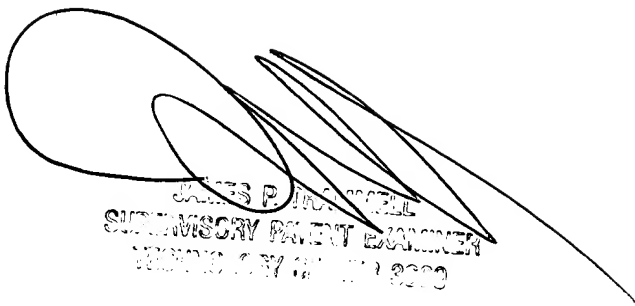
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**Kambiz Abdi**  
Examiner



**December 22, 2004**

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